

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No. 2368/Bang/2024
Assessment Year: 2017-18

Clean Foods Ltd., No.5AC-510, HRBR Layout, 2 nd Block, Kalyan Nagar, Outer Ring Road, Bangalore – 560 043. PAN – AAACC 7602 F	Vs.	1. The Income Tax Officer, Ward - 2(1)(1), Bengaluru. 2. NFAC, New Delhi.
APPELLANT		RESPONDENT

Assessee by	:	Shri S Ananthan, CA & Smt. Lakshmi Rameswaran, CA
Revenue by	:	Smt. Nandini Das, CIT (DR)

Date of hearing	:	23.01.2025
Date of Pronouncement	:	03.03.2025

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against the ex-parte order dated 21/07/2023 passed by the Commissioner of Income Tax (Appeals) [CIT(A)]/NFAC, Delhi in ITA No. ITBA/NFAC/S/250/2023-24/1054507089(1) for the assessment year 2017-18, rejecting the appeal preferred against the penalty order passed under section 270A of the Income Tax Act, 1961.

2. The assessee company filed its return of income for AY 2017-18 dated 31-10-2017, which was subsequently revised. The assessment was completed under section 143(3) of the Act on 26/12/2019, wherein the Assessing Officer (AO) disallowed Rs. 5,67,30,974/-, treating it as capital expenditure and initiated penalty proceedings under Section 270A for alleged misreporting of income. The AO finally levied a penalty of Rs. 3,54,28,512/- under section 270A vide order dated 27/03/2022, despite the appellant's request to keep the penalty proceedings in abeyance till pending rectification application under section 154 of the Act.
3. Aggrieved, the assessee preferred an appeal before the Id. CIT(A). However, the CIT(A) passed an ex-parte order on 21/07/2023, dismissing the appeal without considering the merits of the case.
4. Being aggrieved by the order of the Id. CIT-A, the assessee is in appeal before us.
5. The Id. AR before us contended that it was not aware of the ex-parte order until it received a communication from the AO on 07/11/2024 regarding outstanding demand. Upon verification of the income tax portal, it was found that notices dated 05/07/2023 and 12/07/2023 by the Id. CIT-A were sent to the email id of former employee of the assessee company, who were no longer associated with the company. Consequently, the assessee was not given an effective opportunity to present its case before CIT(A). Thus the Id. AR prayed before us to restore the issue to the file of the Id. CIT-A for fresh adjudication as per the provisions of law.

6. On the other hand, the Id. DR before us vehemently supported the order of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the appellant's claim that there was no effective service of notice and that the principle of natural justice was violated by proceeding ex-parte without granting a proper opportunity of hearing. The assessee has raised substantive grounds of appeal, particularly on the levy of penalty under section 270A of the Act, arguing that a bona fide legal claim in the return of income does not amount to misreporting. In our considered opinion, the impugned issue deserves a fair consideration on merits. Considering the facts and circumstances, and in the interest of justice, we deem it fit to set aside the ex-parte order passed by Id. CIT(A) and remand the matter back for fresh adjudication after granting the assessee a reasonable opportunity of being heard. In light of the above findings, we direct the CIT(A) to provide a fresh hearing to the assessee and pass a reasoned order after affording a proper opportunity of hearing. The appellant is also directed to cooperate with the proceedings and ensure timely submissions. Accordingly, the appeal of the assessee is allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in court on 3rd day of March, 2025

Sd/-

(KESHAV DUBEY)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 3rd March, 2025
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore